

IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH.

Date of Decision: 15.11.2006

Mukhtiar Singh

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE H.S.BHALLA

Present:- Mr.Kanwaljit Singh, Advocate,
for the petitioner.

Mr. Harbhajan Singh Sran, Advocate
for respondent No.2.

H.S.BHALLA, J.

The petitioner has knocked the door of this Court by filing the present petition under Article 226 of the Constitution of India wherein he has sought issuance of a writ in the nature of certiorari for setting aside the impugned order dated 4.4.2006 (Annexure P-8), which was notified on 10.4.2006 on the ground that the same is illegal, unlawful and against the provisions of the Act. He has also challenged the notification dated 10.4.2006 (Annexure P-10) appointing respondent No.3 as Chairman of the Market Committee, Lehraghagga, district Sangrur.

As per the case of the petitioner, the petitioner was a member of the Panchayat Samiti and as per the provisions of Section 12 of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as "the Act"), the State Government is to establish a Market Committee. The constitution of the Market Committee is laid down under Section 12 of the Act. Respondent No.2-Market Committee is duly notified and has 17 members and in such like circumstances, the State Government can nominate one member representing the Cooperative Societies subject to

the conditions laid down under sections 11, 12, 15 and 16 of the Act. A perusal of these sections clearly lays down that while constituting a Market Committee, the State Government has to take member of the Panchayat Samitis situated within the market committee area and since the petitioner is a member of the Panchayat Samiti within the Market Committee area, therefore, he was eligible to be a member of the Market Committee and was accordingly appointed as Chairman of the Committee through notification dated 5.7.2005 (Annexure P-1) issued by the State Government. The petitioner took the charge as a Chairman on 31.7.2005 and submitted his joining report to all the concerned authorities. On 23.7.2005 the government issued two orders by virtue of which the petitioner was removed from the Chairmanship of the Market Committee by nominating Ujagar Singh and appointing Gurtej Singh, member of the Cooperative Agricultural Service Society to be the Chairman of the same. The petitioner has categorically pleaded that this order has been passed without assigning any reason and without passing any resolution by the Market Committee and no opportunity of hearing was given to him before passing the order of removal. It is further pointed out that the power for the appointment and removal of the Chairman only vested in the Committee by a majority of 2/3rd of total members, which can pass a resolution subject to the confirmation by the Board, but no such resolution has been passed. Moreover, the petitioner never misconducted nor was any negligent in his duties and it was only on account of politics, he was removed without assigning any reason. It is further pleaded that the petitioner has challenged his removal by way of Civil Writ Petition No.12432 of 2005 and vide interim order dated 11.8.2005, a Division Bench of this Court stayed the operation of the impugned order and when this writ petition came up for hearing, a Division Bench of this Court, after appreciating Sections 15 and 16 of the Act, holding that no meeting as envisaged under Section 16 of

the Act was convened for removal of the petitioner as Chairman, allowed the writ petition vide order dated 5.12.2005 (Annexure P-5) and quashed the impugned orders. After passing of this judgment, the petitioner received a notice dated 21.1.2006 calling upon him to furnish his reply as to being ineligible to be a member of a Agricultural Market Committee. The petitioner replied to the same by pleading that he is not disqualified and in fact, he was summoned by the Court under Section 319 of the Code of Criminal Procedure. Later on, he was found innocent and moreover, it is not a case, which would earn a disqualification in any manner since the offence does not involve moral turpitude. It is further pointed out that without granting any opportunity of hearing in an absolutely illegal and unlawful manner, respondent No.1 passed the order holding that the petitioner is not eligible to be a member of the Market Committee. The petitioner has categorically pleaded that the order of removal has been passed with a pre-determined mind and no opportunity of hearing was given and merely because an explanation has been asked for, is not good enough as it will not amount to the compliance of principles of natural justice in any manner. The petitioner further pointed out that the case FIR No.164 under Section 307 read with Section 34 of the Indian Penal Code and Sections 27,54 and 59 of the Indian Arms act was tried by the Fast track Court, Sangrur and the investigation of the case was conducted by the Superintendent of Police (D), Sangrur, who found the petitioner innocent, but later on an application under Section 319 of the Code of Criminal Procedure, the petitioner was summoned by the Court and was tried for the offence in which he was ultimately convicted. Against the conviction order, the petitioner preferred a Criminal Appeal No.407-SB/2005 before this Court, wherein a Single Bench of this Court, vide order dated 15.7.2005, suspended the sentence of the petitioner and in any case, a criminal case does not involve moral turpitude and therefore, the

order of removal could not be passed by the respondents.

On the other hand, the petition was contested by the respondents. Respondent No.2 filed a detailed written statement by virtue of which most of the assertions raised in the writ petition were denied. However, it was admitted that the petitioner was nominated/appointed as Chairman of Market Committee, Lehra Ghagga on the basis of being a member of the Panchayat Samiti, but on conviction, he could not continue as a member of the Panchayat Samiti and once the petitioner has incurred disqualification as a member of the Panchayat Samiti, he has lost the qualification on the strength of which, he was appointed as member and Chairman of the answer respondent-Committee and finally, it was prayed that the petition be dismissed.

A short written statement was filed on behalf of respondent No.3 Gurtej Singh, through which he asserted that he is a Member of the Managing Committee, CASS, Jawaharwala and Marketing Processing Society, Leharaghagga and he has been rightly nominated as a Chairman in accordance with law and he also prayed for the dismissal of the petition.

I have heard the learned counsel on either side and have also gone through the record of the case.

It is an admitted case of the parties that vide notification dated 5.7.2005 (Annexure P-1), petitioner Mukhtiar Singh was nominated as a Chairman of the Market Committee, Leharaghagga, District Sangrur. The notification dated 5.7.2005 runs as under:-

“Punjab Government

Agricultural Department

(Mandi Branch)

NOTIFICATION

No.1/33/03M-3/5154

Dated: 5.7.2005

Sub Section (1) of Section 16 of Punjab Agricultural

Produce Markets Act, 1961 (Punjab Act No.23 of 1961) and exercising the other powers authorising in this respect the Governor of Punjab is pleased to nominate the following members as Chairman, Vice-Chairman of Market Committee, Lehra Ghagga out of nominated members of Market Committee, Lehra Ghagga (Sangrur):-

List

Sr.No.	Name of nominated person and address.	Remarks
1	2	3
1.	Mukhtiar Singh, Samiti Member son of Puran Singh, village Bhutal Kalan.”	
2.	Ram Rashpal Singh, Arti, village Alisher, Vice Chairman.”	

Sd/- P.K.Verma

Financial Commissioner Development and

Principal Secretary, Punjab Govt.

Agriculture Department.”

In compliance to this notification, the petitioner took the charge of Chairman on 21.7.2005. It is again not disputed that the petitioner was removed from Chairmanship and the notification dated 5.7.2005 was amended, which runs as under:-

PUNJAB GOVERNMENT

AGRICULTURE DEPARTMENT

(MANDI BRANCH)

AMENDED LETTER

Vide Sub Section (i) of Section 16 of Punjab Agricultural Produce Markets Act, 1961 (Punjab Act No.23 of 1961) out of nominated members of Market Committee Lehra Ghagga

(District Sangrur) regarding nomination of Chairman.Vice Chairman the notification issued by this Department No.1/33/03M-3/5154 dated 5.7.2005 is amended as under:-

At Sr. No.1 in place of Mukhtiar Singh, Samiti Member s/o Puran Singh, village Bhutal Kalan be read as Gurtej Singh, Member, CASS Village Kotra Lehal.

Sd/- P.K.VERMA

Financial Commissioner Development and
Principal Secretary, Punjab Government
Agriculture Department.”

All this shows that the name of the petitioner as a Member was substituted by the name of one Ujaggar Singh and on the same day, the name of the petitioner as a Chairman was substituted by the name of respondent No. 3 Gurtej Singh. In such like circumstances, learned counsel for the petitioner vehemently argued that the impugned letters being orders are not only violative of principles of equity and natural justice but also of the procedure for removal prescribed under Section 15 of the Act. It is contended that the impugned letters have the effect of removing the petitioner from Membership as well as from Chairmanship of the Market Committee without granting any opportunity of being heard to the petitioner. Learned counsel has placed reliance on the provisions of Section 15 of the Act, whereby power has been conferred on the State Government to issue notification of a member, if in its opinion, he is found guilty of misconduct or neglect of duty or has lost the qualification on the strength of which he was appointed. However, in the proviso to the aforesaid Section, it has been provided that before the State Government notifies the removal of a member under this Section, the reasons for his proposed removal shall be communicated to the member concerned and he shall be given an opportunity of tendering an explanation in writing.

Learned counsel for the petitioner further contends that as far as removal of a Chairman or Vice Chairman, the same can be done only by a 2/3rd majority of the total members at a meeting specially convened for this purpose as provided under Section 16 of the Act.

The stand of the respondents, on the other hand, is that the petitioner is not eligible to be a member of the Market Committee in terms of Section 3(5) (e) of the Act having incurred the disqualification specified therein on account of his conviction in an offence under section 307 of the Indian Penal Code and Sections 35 and 27/54/59 of the Arms Act. I have considered the contentions raised by the learned counsel for the parties, which have been examined by me in the light of the material available on the record particularly the notifications and the letters by virtue of which the petitioner was removed from Membership and Chairmanship of the Committee and for the reasons to be recorded by me hereinafter, I find that the amended letters (Annexures P-3 and P-4) cannot be sustained as the same were violative of principles of equity and natural justice as also the mandatory provisions of Section 15 of the Act. At this stage, I would like to reproduce Section 5 (e) of Section 3 of the Act which reads as under:-

“(5) No person shall be eligible to become a member of the Board who - -

- | | | | |
|-----|----|----|----|
| (a) | XX | XX | XX |
| (b) | XX | XX | XX |
| (c) | XX | XX | XX |
| (d) | XX | XX | XX |

(e) has been declared as insolvent or sentenced by criminal court whether within or outside the Punjab State, for an offence involving moral turpitude.

Provided that the disqualification under clause (e) on the ground of a sentence by a criminal court shall not apply after

the expiry of four years from the date on which the sentence of such person has expired.”

A perusal of the Section reproduced above clearly spells out that mere conviction under an offence by itself is not enough to attract disqualification. It is to be shown that the offence involves moral turpitude. It is true that if the petitioner had been convicted in an offence involving moral turpitude, then he has no legs to stand. But in the instant case, he was convicted under section 307 of the Indian Penal Code read with other Sections and the learned counsel appearing for the respondents has not been able to show that the offence for which he has been convicted involves moral turpitude. As per the stand of the Market Committee through its written statement, when it came to their knowledge that the petitioner was convicted and sentenced under FIR No.164, he was removed from the post of Chairmanship of Market Committee, Lehra Ghagga. It is conceded by the learned counsel for the respondents that the petitioner has not been removed on account of any misconduct and it was only on the basis of the conviction mentioned above that he was removed from Chairmanship of the Market Committee. The petitioner received a notice dated 21.1.2006 (Annexure P-6), which clearly spells out that on the basis of the report of the Deputy Commissioner, Sangrur to the effect that the petitioner Mukhtiar Singh had undergone imprisonment of five years along with a fine of Rs.5,000/- under Sections 307/148/149 of the Indian Penal Code and Section 55/27, 54/59 of the Indian Arms Act, Police Station Moonak calling upon to explain his position within 15 days that why he should not be removed as a Member of Market Committee, LehraGhagga under Section 15 of the Act being ineligible for the member of the Market Committee Lehraghagga (Sangrur). The contents of the show cause notice dated 21.1.2006 (Annexure P-6) are as follows:-

PUNJAB GOVERNMENT

AGRICULTURE DEPARTMENT

(MANDI BRANCH)

NOTICE

“Vide Notification No.1/33/03-M-3/5154 dated 5.7.2005, Sh. Mukhtiar Singh, Samiti Member, son of Sh. Puran Singh, resident of village Bhutal Kalan was appointed as Chairman by nominating him as a member of Market Committee, Lehra Ghagga, District Sangrur vide notification no.1/33/03-M-3/5151 dated 5.7.2005, under Section 12 of the Punjab Agricultural Produce Market Act, 1961,

Vide letter No.1221/LFA dated 11.7.2005, the Deputy Commissioner, Sangrur submitted his report that Sh. Mukhtiar Singh, had undergone imprisonment of 5 years along with a fine of Rs.5000/- under Sections 307/148/149 IPC and Section 55/27, 54/59 of Arms Act, PS Moonak in FIR No.164 dated 5.11.2002. At the time of sending report, he was confined in District Jail, Sangrur.

That Sh. Mukhtiar Singh, Samiti Member son of Sh. Puran Singh, resident of village Bhutal Kalan, is not eligible for the post of member of Market Committee, Lehraghagga, under Section 12(4) of the Punjab Agricultural Produce Mandi Act, 1964.

Therefore, the Governor of Punjab is pleased to inform his through this notice that he must explain his position within 15 days that why he should not be removed as a Member of Market Committee, Lehraghagga under Section 15 of the Punjab Agricultural Produce Mandi Act, 1961 due to ineligibility for the member of Market Committee Lehraghagga (Sangrur). It is also made clear that in case of no explanation within the

stipulated period it shall be presumed that he is nothing to say in his defence, and disciplinary action will be taken as per rules.

Sd/ P.K.VERMA

Financial Commissioner Development and
Principal Secretary, Punjab Government
Agriculture Department.”

A perusal of the show cause notice reproduced above clearly spells out that he was being removed as a Member of the Market Committee merely on the basis of the conviction order passed in a case registered against him under FIR No.164 dated 5.11.2002 and at no stage, any order was passed removing him as a Member of the Panchayat Samiti. What was raking in the mind of the competent authority at the time of passing of the order of removal from the membership as well as from the Chairmanship of the Market Committee was that he has been convicted by the criminal Court. To my mind, the conviction of the petitioner in the offence mentioned above is not a disqualification since this offence does not amount to moral turpitude. Whether an offence involves moral delinquency is a question of fact depending on the public morals of the time; common sense of community and context and purpose for which the character of offence is to be determined. In common parlance 'moral turpitude' means baseness of character. Concise Oxford Dictionary defines moral – concerned with goodness or badness of character or disposition or with distinction between right and wrong.....virtuous in general conduct...”Turpitude means “baseness depravity; wickedness”. Thus any act which is contrary to good morals from society's point of view will come within the ambit of 'moral turpitude'

In **Durga Singh Vs. State of Punjab**, AIR 1957 Punjab 97, it was held as under:-

“ The term “moral turpitude” is rather vague one and it may have different meanings in different contexts. The terms has generally been taken to mean to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellow woman or to society in general. It has never been held that gravity of punishment is to be considered in determining whether the misconduct involves moral turpitude or not.”

Even to my mind, per se, an act of murder will not come within the broad concept of 'moral turpitude' as interpreted by the Courts. The case of the petitioner is on better footing since he has been convicted for an offence punishable under section 307 of the Indian Penal Code (an attempt to murder). In such like circumstances, the contention of the learned counsel for respondent-Market Committee that the conviction of the petitioner is covered under term 'moral turpitude' is liable to be noticed only for the sake of rejection. Now reverting back to the facts of the case in hand, it is again admitted case of the parties that in response to the show cause notice mentioned above, the petitioner filed his reply/explanation (Annexure P-7) in which he categorically pleaded that he preferred an appeal before this Court for keeping his Chairmanship of the Market Committee intact, but even then on the basis of the conviction order passed by the learned Additional Sessions Judge, Sangrur, in a case registered against the petitioner under FIR No.164, the petitioner vide notification dated 10.4.2006 was removed as a member of the Market Committee, Lehraghagga with immediate effect. Moreover, the learned counsel appearing for the respondent-Market Committee has not been able to place on record any resolution with regard to the meeting as envisaged under Section 16 of the Act for removal of the petitioner as a Chairman. Sub Section 5(e) of Section 3 of the Act reproduced above,

clearly spells out that no person shall be eligible to become member of the Board, which has been declared insolvent and sentenced by the criminal court for an offence involving moral turpitude and since the offence under which the petitioner has been convicted does not involve moral turpitude, the petitioner could not be removed from the membership nor he could be removed from the Chairmanship of the Market Committee and the impugned orders/letters are liable to be quashed. Thus, I am of the view that the respondent Nos. 1 and 2 had no valid basis to remove the petitioner and it appears that the amended letters/orders have been passed so as to facilitate the appointment of respondent No.3 as a member/Chairman of the Market Committee.

In view of what has been stated above, this petition succeeds and it is hereby accepted. Consequently, order/letter dated 4.4.2006 (Annexure P-8) and notification dated 10.4.2006 (Annexure P-10) are quashed. The petitioner shall continue to be the Chairman of the Market Committee, Lehraghagga, district Sangrur, along with all past benefits as admissible under the rules with effect from the date he assumed charge as if no order of removal was passed against him. No order as to costs.

(H.S.BHALLA)
JUDGE

15.11.2006
VK